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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1513 OF 2006

Mr. Akhlesh Tulsidas Dubey ... Petitioner

Vs.

State of Maharashtra & Ors. ... Respondents

Mr. V.N. Tayade for the petitioner.

Mr. D.S. Mhaispurkar, A.P.P. for the State.

Ms. Lakshmi Menon for the Intervenor.

CORAM : SMT. RANJANA DESAI &
SMT. V.K. TAHILRAMANI, JJ.

DATED : 24TH JANUARY, 2007.

P.C.:-

1. In this petition, the following prayers are made.

> "a) that this Hon'ble Court be pleased to direct the Respondent to produce the entire record regarding the death of Mr. Ghanhsyam Kori on 21.8.2005 and after examining the entire record direct the Respondent No.2 or the State C.I.D. to conduct the investigation to book the culprits behind the crime, while issuing Writ of Mandamus under Article 226 of the Constitution of India;
>
> b) pending the hearing and final disposal of this Petition, direct the Respondent No.4 to submit the case investigation diary, copy of F.I.R. Regarding the death of Mr. Ghanshyam Kori who was found murdered on 21.8.2005 at Badlapur and after

> examining the entire records direct the further investigation by the Competent and Independent Authority."

2. On 19/10/2006, after hearing the learned counsel for the petitioner, this court directed the Commissioner of Police, Thane to transfer the investigation to D.C.P. Zone IV, to personally carry on the investigation through its team of officers under the direct supervision of the Commissioner of Police. There was a further direction that none of the officers of Badlapur Police Station who were at the time of commission of offence posted at Badlapur Police Station should be associated with the investigation of the case. The investigation was ordered to be concluded preferably within a period of eight weeks from the date of the said order.

3. We are informed by Mr. Mhaispurkar, the learned A.P.P. that accordingly, the investigation was transferred to D.C.P. Zone IV. The investigation has been carried out by him personally through his team of officers under the direct of supervision of the Commissioner of Police, Thane. In fact, Mr. D. Sivanandhan, the Commissioner of Police, Thane, has filed an affidavit to the instant petition stating this fact.

4. We have already quoted the prayers made in this petition. By reason of transfer of investigation, the prayers made in the petition have been granted. The petition has worked itself out. We are informed by the learned A.P.P. that the investigation has been completed and the charge-sheet has

been filed on 2/1/2007. This has also been stated by Mr. Sivanandhan, the Commissioner of Police, Thane in his affidavit. We feel that since the grievance of the petitioner has been redressed, it is not necessary to entertain this petition. The learned counsel for the petitioner, however, contended that this court had, in paragraphs 7 and 8 of its order dated 19/10/2006, directed the Commissioner of Police, Thane, to get the complaint of witness Manoj Kamta Sharma duly inquired into and if the complicity of the three police personnel is found, to take departmental action against them for tampering with the investigation. The Commissioner of Police was also directed to look into the conduct of police officers of Badlapur Police Station, who were till then concerned with the investigation of the case and could not make any progress in the matter. The learned counsel for the petitioner contended that these directions have not been followed meticulously by the Commissioner of Police. Mr. Mhaispurkar, the learned A.P.P. has drawn our attention to paragraphs 15 and 16 of the affidavit of Mr. Sivanandhan, the Commissioner of Police, Thane. These paragraphs indicate that action has been taken by the police as directed by this court in its order dated 19/10/2006. If the petitioner is dissatisfied by this action, he may adopt such remedy as may be open to him in law, if he so desires. We, however, make it clear that we have given no liberty to the petitioner to adopt any such remedy nor have we expressed any opinion one way or the other on the same and the court dealing with any such proceeding will dispose it of independently and in accordance with law.

AJN

5. Ms. Menon, the learned counsel for the Intervenor contended that the wife of accused 1 wanted to intervene in the matter and the petition may be adjourned. We are unable to do so. On the last occasion, the same prayer was made and we had given time to the proposed intervenor to file the intervention application. However, till today, no such application is filed. It is, therefore, not possible for us to entertain such application. The petition is disposed of.

[SMT. RANJANA DESAI, J.]

[SMT. V.K. TAHILRAMANI, J.]